

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
MAJOR LAKESHORE VARIANCE (#FLV-20-02)
LAKESIDE MARINA RESORT, LLC
MAY 27, 2020

A report regarding a request by APEC Engineering, Inc. on behalf of Lakeside Marina Resort, LLC for a major variance to the Flathead County Lake and Lakeshore Protection Regulations (FCLR) to allow for the placement of a retaining wall 60 feet lakeward of an existing retaining wall, the application of 2,394 cubic yards of fill behind the new retaining wall to create paved parking spaces, a driving lane, a concrete walkway, landscaping buffers, and a location to install a stormwater filtration system. The applicant is also proposing a dock 111 feet in width, parallel to the new retaining wall. The variance is being requested because the proposed fill would be placed below high water in quantities which exceed one cubic yard per sixteen lineal feet of shoreline and maximum six inches in depth and would consist of materials that differ from clean, washed rock with a minimum diameter of ¾ inches. Additionally, the proposed retaining wall would be located more than three feet lakeward of the existing retaining wall, the proposed dock would exceed the maximum 8 feet in width, and the total constructed impervious surface areas would exceed the limits. The proposed variance is located within the Lakeshore Protection Zone (LPZ) on Flathead Lake.

I. GENERAL INFORMATION

A. Application Personnel

i. Owner

Lakeside Marina Resort, LLC
341 West Second Street
San Bernardino, CA 92401

ii. Applicant

APEC Engineering, Inc.
75 Somers Road
Somers, MT 59932

iii. Contractor

TBD

B. Property Location and Size

The subject property is located at 7129 Highway 93 South in Lakeside, MT (Figure 1). The property has approximately 246 feet of shoreline and can be legally described as Tract 1D in Lot 4, located in Section 7, Township 26 North, Range 20 West, P.M.M., Flathead County, Montana. Additionally, the adjacent Tracts 1DA and 1F are under the same ownership as the subject property for a total of approximately 440 feet of shoreline.

Figure 1: Subject property (location of project in red)



C. Summary of Request

This is a major variance request to allow for the placement of a concrete retaining wall 60 feet lakeward of an existing retaining wall and the application of 2,394 cubic yards of fill behind the new retaining wall to create paved parking spaces, a driving lane, a concrete walkway, landscaping buffers, and a location to install a stormwater filtration system. The applicant is also requesting a dock 111 feet in width, parallel to the new retaining wall. The proposed work would occur within an existing man-made channel in Flathead Lake, abutting the Highway 93 right-of-way.

According to the applicant, the property contains 11,858 square feet of impervious surface over the water, and a total of 23,828 square feet of impervious surface within the LPZ. The total of all constructed impervious surface areas shall not exceed 3,520 square feet over the body of water and 4,400 square feet within the LPZ, based on 440 feet of shoreline. Impervious cover on the subject property currently exceeds the limits. This proposal would add approximately 1,110 square feet of impervious surface over the water and 7,770 square feet of impervious surface within the LPZ.

The subject property is currently developed as a commercial marina with docks, a restaurant, and parking. The adjoining properties to the north and southeast are also part of the Lakeside Marina Resort and contain additional docks, buildings, and parking. A legally non-conforming building was historically located over the water within the area of the proposed fill but was recently removed. A 'Settlement Agreement' from 2007 between the Board of County Commissioners, the Flathead Lake Protection Association, and the landowners allows for the replacement of the building in accordance with the plans submitted and approved during the review process for a previous Major Variance and Lake and Lakeshore Construction Permit (FLV-04-09).

The Environmental Impact Statement (EIS) states the reason for the variance request is, "The proposed project is adding much needed parking to this very popular area within Lakeside, on the lakeshore side of the highway. This project accomplishes two other important tasks: Creating a 5' wide sidewalk, a much-needed, safe pedestrian connection along a very busy section of U.S. Highway 93, in Lakeside, Montana. Also, this project addresses a need for stormwater treatment at a location where an MDT culvert discharges into a very shallow portion of a man-made waterway on the shoreline of Flathead Lake by adding a filtration treatment system to this water that is currently discharged into the lake." The 111' wide dock is requested to provide access to the boat slips for Marina, Harbor Grille, and Far West Boat Tour customers.

According to the EIS, "The project site is a long, shallow dredged channel reaching almost to the highway right-of-way, at 104' to 111' wide by 146' long on the north side, and 230' long on the south side. Its length consists of exposed, bare ground during the low water season, except for a pool of stagnant water at the far west end. (The former restaurant hid this condition). This man-made channel is made completely of retaining walls, averaging 8' high from the lakebed. The walls were reconstructed after 2006 and are in very good condition. The lakeshore surface is a combination of paved parking areas, gravel buffer strips adjacent to retaining walls and bare soil next to the highway edge; no vegetation present."

D. Section of the Regulations the Variance Request Applies to:

With this Major Variance, the applicant is requesting a variance to the following sections of the Flathead County Lake & Lakeshore Protection Regulations:

- 1) Section 4.2(E)(2)(a): The total of all constructed impervious surface areas over the body of water, at high water elevation, shall not exceed eight hundred (800) square feet per one hundred (100) feet of shoreline.
- 2) Section 4.2(E)(2)(b): The total of all constructed impervious surface areas within the lake and lakeshore protection area shall not exceed one thousand (1000) square feet per one hundred (100) feet of shoreline.
- 3) Section 4.3(A)(2)(a)(9): The width of the deck of a dock shall be limited to eight (8) feet.
- 4) Section 4.3(B)(2)(c)(4): The amount of impervious (constructed) surface in the lakeshore protection zone per property shall not exceed 15 square feet for each lineal foot of lakeshore frontage.
- 5) Section 4.3(B)(2)(c)(5): The amount of impervious (constructed) surface located below the mean annual high water line shall not exceed 12 square feet for each lineal foot of lakeshore frontage.
- 6) Section 4.3(E)(2)(a)(3): Retaining walls and rip rap designed to extend the land area into the lake shall not be permitted.
- 7) Section 4.3(E)(2)(c)(7): If an existing wall has to be replaced, it shall be completely removed from the Lakeshore Protection Zone and the replacement wall shall be constructed in essentially the same location as the existing wall. If removal of the wall proves unfeasible or will cause environmental hazards (sedimentation, bank failure, etc.), a new wall may be constructed up to three (3) feet lakeward of the existing wall. Typically one such extension into the lake is allowed.
- 8) Section 4.3(F)(2)(e): Fill projects for the purpose of expanding existing land areas shall not be permitted.

- 9) Section 4.3(F)(2)(f): Discharge of fill material directly into the lake shall not be permitted.
- 10) Section 4.3(F)(2)(h)(3): Placement of fill directly into the waters of any lake is prohibited.
- 11) Section 4.3(F)(2)(h)(4): All fill shall be clean, washed rock with a minimum diameter of $\frac{3}{4}$ inch and a maximum diameter to be determined at the time of on site inspection free of silts, sands and fines. Rock type, size and color shall approximate that existing on the adjacent lakeshore.
- 12) Section 4.3(F)(2)(h)(5): Maximum fill depth is four to six inches.
- 13) Section 4.3(F)(2)(h)(6): The volume of fill shall not exceed one cubic yard per sixteen lineal feet of lake frontage.

II. EVALUATION OF REQUEST:

The criteria set forth in the Flathead County Lake & Lakeshore Protection Regulations Section 5.1(A) regarding Major Variances were used to determine findings of fact and to evaluate the variance request as outlined below:

A. Due to unusual circumstances a strict enforcement of such requirements and standards would result in undue hardship.

The application states, "Because the Lakeside Marina has developed over time with decisions based on lesser population, different priorities and different lakeshore standards, leaving the current owner with this long, shallow channel within the Marina property that bisects the Marina operations, forcing the users and customers of the facility (and the community) to use an inadequate, uneven dirt path at the edge of the highway to access one side from the other. Also, pedestrians leaving vehicles and boat trailers in overflow parking lots across the highway and further south, must walk to the Bierney Creek crosswalk, or more typically, dash across the highway between streams of cars. The additional land area provided by filling this 60' wide portion of that channel, at this critical location for the commercial marina and restaurant, and cruise boat, and public boat launch operations could alleviate the above described conditions."

As outlined in the EIS, the natural lakeshore on the subject property was previously dredged to create a channel, resulting in a lack of lakeshore along the highway right-of-way. Storm water runoff from the MDT culvert discharges directly into the lake, and stagnant water accumulates within the channel during the low water season, impacting water quality. The variance requests to the retaining wall and fill standards are required to allow for the installation of a storm water filtration system and to mitigate issues with water circulation in the channel.

The application indicates the lack of lakeshore also creates a hardship for pedestrians and vehicles accessing the property. The variance requests to the retaining wall and fill standards, as well as the impervious cover standards, would also allow for a walkway, parking spaces, and a driving lane within the area of the proposed fill. However, parking areas currently exist elsewhere on the property, thus, there does not appear to be a hardship attributed to parking and vehicle access.

Additionally, the applicant is seeking variances to the dock width, marinas, and impervious cover over the body of water standards to allow for a dock 111 feet in width, parallel to the new retaining wall, to provide additional pedestrian access across the property.

Finding #1 – Due to the unusual existence of a man-made channel and lack of natural shoreline on the subject property, a strict enforcement of the requirements and standards

regarding retaining walls, fill, docks, marinas, and impervious cover could result in undue hardship because water quality would continue to be impacted by storm water runoff and poor water circulation within the channel, and pedestrian access along the highway right-of-way would remain inadequate.

B. No reasonable alternatives exist which do meet the standards herein.

The application states “The Flathead County Lakeshore 2006 Settlement Agreement with Lakeside Marina (p.6, item #17) allows for replacement of the elevated floor deck structure within the original Rosario’s restaurant outline (non-compliant, grandfathered). A replacement of this original structure would not address the issue that has been evident (as described in the 2004 Joint Application) of the ‘shallow man-made waterway’.

There is no alternative to the proposal that would also create the described benefits of this current proposal. Members of the community (including the Lakeside Community Development Foundation), the surrounding business owners, and a local water quality watch group (Flathead Lakeshore Protection Association), are in favor of this proposal and its benefits.

These benefits include shortening this portion of the harbor to improve water circulation (not stagnation) and to intercept impeded water, for filtration/treatment before discharging back into the lake.

Providing walkway on the east (marina) side and the west (highway side) enhance safe pedestrian access; 20 additional onsite parking spaces add up to fewer persons having to cross the busy highway during peak seasons. Landscaping strips improve not only the aesthetics of this location, but also provide additional erosion control.”

The application lists several alternatives to the project including taking no action or replacing the original elevated building. Both alternatives would result in continued impacts to water quality and pedestrian access. An additional alternative not addressed within the application would be to install the proposed retaining wall and fill to accommodate the storm water filtration system pedestrian walkway, and landscaping buffers, without creating additional parking and a non-conforming dock. It seems this alternative would address the issues of water quality and pedestrian access while minimizing the amount of additional impervious cover and without creating a non-conforming dock. However, this alternative would not meet the standards of the Lake and Lakeshore Protection Regulations and variances to the standards would still be required.

Finding #2 – No other alternatives appear to exist which meet the standards for the Lake and Lakeshore Protection Regulations that would improve water quality and pedestrian access because the property contains insufficient lakeshore to install a storm water filtration system and pedestrian facilities along the highway right-of-way.

C. Granting of the variance will not have adverse impacts on the lake or lakeshore in terms of the Section 4.1 "Policy Criteria for Issuance of a Permit".

The proposed action shall not, during either its construction or its utilization:

i. Materially diminish water quality;

The standards and policies within the lakeshore regulations ensure that applicants and their representatives minimally affect the quality of the lake water by limiting construction to times of low pool. This limitation is enacted to control, “negative impacts such as siltation, contamination or spread of debris.”

The application states, “The materials used for construction will be prevent from interaction with lake water, either directly or airborne during the process, and affects upon water quality will be avoided. There will be no removal of ground cover, but instead be the addition of the appropriate surfacing materials such as washed gravel and native shrubs and vegetation. The proposal to install the Jellyfish stormwater filtration system will only add to protecting water quality, as will the shortened channel improve the circulation of lake water.”

A letter from Applied Water Consulting was submitted with the application which outlines test results from water quality samples that were collected from the outfall. The letter states, “In summary, the overall quality of the groundwater discharging from the outfall is considered poor and would have a negative impact on the water quality of Flathead Lake.”

The application indicates that filling the channel and installing a storm water filtration system and landscaping buffers would improve water quality. The proposal also includes paved parking within the area of proposed fill, which would add additional impervious surface and potentially introduce leaking oil and other hazardous liquids from vehicles. However, the storm water filtration system could potentially accommodate additional storm water runoff generated from the parking area.

Finding #3 – Allowing the variance would not materially diminish water quality because construction would take place at low pool and the proposed retaining wall, fill, and storm water filtration system would result in improved water quality.

ii. Materially diminish habitat for fish or wildlife;

During installation of the proposed retaining wall, fill, dock, and associated improvements, fish habitat would not be affected since construction would take place during the low pool season, per Section 4.2(A)(2(a) FCLLP. When the lake is at full pool, habitat for fish and wildlife should not be diminished because the proposed work would occur within an existing commercial marina surrounded by concrete retaining walls, which likely does not serve as critical habitat for fish or wildlife.

Finding #4 – Allowing the variance would not materially diminish habitat for fish or wildlife because construction would take place at low pool and the proposed construction would occur within an existing commercial marina.

iii. Interfere with navigation or other lawful recreation;

The location of the proposed fill, retaining wall, and dock is on private property and is not likely to interfere with navigation or other lawful recreation. Although the project would occur below high water, the fill, retaining wall, and dock would be located landward of the existing marina docks.

iv. Create a public nuisance;

The proposal would extend the shoreline lakeward to provide a stormwater filtration system, landscaping buffers, a walkway, and parking and driving areas, and would create a dock along the shoreline to provide additional pedestrian access.

The application states, “This proposal was put together to alleviate a few nuisances, concerns expressed by members of the community. During the 2019 remodeling, demolition of old structures, construction of improvements to the existing restaurant, the fueling station, restrooms and convenience store, the visible US Highway 93 culvert discharge into the lake was brought up, professional water testing was done (see

attached report).

Comments were made about the long, open (and ugly) channel. There was a demand for more onsite parking spaces. Customers mentioned ‘poor curb appeal – can’t there be some sort of landscaping?’ Our local nonprofit, the Lakeside Community Development Foundation has had a long term goal of sidewalks or pedestrian path, continuous through the center of Lakeside. Montana Department of Transportation would not allow the highway right-of-way to be used for this sidewalk, and our Flathead County Commissioners wanted the owner to build the sidewalk within his own (Marina) property, assuming all costs of construction and maintenance. It was out of all these deficiencies that the owner came up with this entire project proposal.”

The goal of the project would be to improve water quality and public access. It is not anticipated that the proposed variance would create a public nuisance.

Finding #5 – The variance would not interfere with navigation or other lawful recreation or create a public nuisance because the expansion of the lakeshore would result in improved water quality and access along the Highway 93 right-of-way, and the proposed work would occur on private property landward of the existing marina docks.

v. Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements; and,

The application states, “The surrounding characteristics of this project location are that of commercial buildings: a bank, a motel, a gas station, a tavern, a business center; to the north, an open narrow shoreline with a public boat launch, private beaches and a public beach and dock. Because of the nature of the marina touching the lakeshore, the owner has chosen the aesthetic of keeping all built forms as minimal as possible, either in height, mass, or materials. Because the surroundings are somewhat barren, the owner has chosen to incorporate landscaping into the finishing of this proposed project. This includes installing native shrubs within gravel beds and seasonal large scale planters along the property edges (with all landscaping features allowing a view to the water).”

The property is currently developed as a commercial marina. The proposal appears consistent with the surrounding area and would not increase the visual impact already associated with the lakeshore property. The applicant is proposing landscaping buffers to minimize the visual impact of the built environment.

Finding #6 – The variance will likely not create a visual impact discordant with natural scenic values because the project would appear consistent with the surrounding landscape and would increase natural vegetation.

vi. Alter the characteristic of the shoreline.

The application states, “This specific portion of Flathead Lake is not a natural shoreline but was, in the past, altered by means of dredging and filling (please refer to vicinity maps to see the natural shoreline contour, and the carved out rectangular channel of the project site). The owner proposes what is better described as reclaiming a portion of the shoreline, and creating a buffer from the busy highway to the lake water.”

The proposed concrete retaining wall is not anticipated to drastically alter the characteristic of the shoreline but will instead rehabilitate the shoreline. Although the shoreline would be altered, it would be consistent with the surrounding marina area.

Finding #7 – The variance would likely not alter the characteristics of the shoreline because the concrete retaining wall will allow for the rehabilitation of shoreline and would be consistent with the surrounding area.

III. SUMMARY OF FINDINGS

1. Due to the unusual existence of a man-made channel and lack of natural shoreline on the subject property, a strict enforcement of the requirements and standards regarding retaining walls, fill, docks, marinas, and impervious cover could result in undue hardship because water quality would continue to be impacted by storm water runoff and poor water circulation within the channel, and pedestrian access along the highway right-of-way would remain inadequate.
2. No other alternatives appear to exist which meet the standards for the Lake and Lakeshore Protection Regulations that would improve water quality and pedestrian access because the property contains insufficient lakeshore to install a storm water filtration system and pedestrian facilities along the highway right-of-way.
3. Allowing the variance would not materially diminish water quality because construction would take place at low pool and the proposed retaining wall, fill, and storm water filtration system would result in improved water quality.
4. Allowing the variance would not materially diminish habitat for fish or wildlife because construction would take place at low pool and the proposed construction would occur within an existing commercial marina.
5. The variance would not interfere with navigation or other lawful recreation or create a public nuisance because the expansion of the lakeshore would result in improved water quality and access along the Highway 93 right-of-way, and the proposed work would occur on private property landward of the existing marina docks.
6. The variance will likely not create a visual impact discordant with natural scenic values because the project would appear consistent with the surrounding landscape and would increase natural vegetation.
7. The variance would likely not alter the characteristics of the shoreline because the concrete retaining wall will allow for the rehabilitation of shoreline and would be consistent with the surrounding area.

IV. CONCLUSION:

Per Section 5.1 of the Flathead County Lake and Lakeshore Protection Regulations a review and evaluation by staff comparing the proposed variances to the general criteria for a major variance request has found the proposal to generally comply with the review criteria, based upon the draft Findings of Fact presented above.

V. CONDITIONS OF APPROVAL:

A. Standard Conditions of Approval:

1. No other activities are permitted within the Lakeshore Protection Zone other than those listed and/or conditioned by this permit.
2. Mechanized vehicles shall be allowed on the lakeshore only in connection with this project. Should any vehicle slice, gouge, or rut the beach, become stuck or expose clay, silts, and fine sands, said vehicle shall be immediately removed from the Lakeshore Protection Zone and an alternative procedure shall follow [Section 4.2(D)(2)(e)].
3. No vehicle shall come in contact with the lake water.

4. All construction debris shall be disposed of outside the Lake and Lakeshore Protection Zone in such a manner and in such a location so as to prohibit its reentry into the lake [Section 4.2(F)(2)].
5. Temporary stockpiling of materials is prohibited in the Lakeshore Protection Zone [Section 4.2(C)(2)(b)].
6. No treated wood or materials are allowed within the Lakeshore Protection Zone.
7. Wet concrete shall not be poured into or allowed to come in contact with the lake water [Section 4.2(B)(2)(e)(3)].
8. This permit must follow the dimensions and project description as submitted, unless amended by the Flathead County Lake and Lakeshore Protection Regulations.

B. Project Specific Conditions of Approval:

9. Placement of fill outside of the footprint of the proposal is prohibited [Section 4.3(F)(2)(h)].
10. All work shall be done when Flathead Lake is at low pool [Section 4.2(A)(2)].

Planner: EA